

House File 2460 - Introduced

HOUSE FILE 2460
BY COMMITTEE ON ECONOMIC
GROWTH

(SUCCESSOR TO HF 783)
(SUCCESSOR TO HF 582)

A BILL FOR

1 An Act relating to small business and disadvantaged business
2 enterprise contracts with the department of transportation.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 314.13, Code 2009, is amended to read as
2 follows:

3 **314.13 Definitions.**

4 As used in this chapter, unless the context otherwise
5 requires:

6 1. "*Agency*" means any governmental body which exercises
7 jurisdiction over any road as provided by law.

8 2. "*Committee*" means the integrated roadside vegetation
9 management technical advisory committee created in section
10 314.22.

11 3. "*Coordinator*" means the integrated roadside vegetation
12 management coordinator.

13 4. "*Department*" means the state department of
14 transportation.

15 5. "*Disadvantaged business enterprise*" means a small
16 business which meets both of the following:

17 a. The business is at least fifty-one percent owned by one
18 or more socially and economically disadvantaged individuals.

19 b. The management and daily business operations of the
20 business are controlled by one or more of the socially and
21 economically disadvantaged individuals who own the business.

22 ~~5.~~ 6. "*Highway*" or "*street*" means the entire width between
23 property lines of every way or place of whatever nature when
24 any part thereof is open to the use of the public, as a matter
25 of right, for purposes of vehicular traffic.

26 7. "*Prequalified*" means that a small business has been
27 approved by the department as a small business, is a recognized
28 contractor engaged in the class of work provided for in the
29 plans and specifications, possesses sufficient resources to
30 complete the work, and is able to furnish a performance bond
31 for one hundred percent of the contract.

32 8. "*Small business*" means any enterprise, which is operated
33 for profit and under a single management, and which has either
34 fewer than twenty employees or an annual gross income of less
35 than four million dollars computed as the average of the three

1 preceding fiscal years. This definition does not apply to any
 2 program or activity for which a definition for small business
 3 is provided for the program or activity by federal law or
 4 regulation or other state law.

5 9. "Socially and economically disadvantaged individual" means
 6 an individual who is a citizen of the United States or who is
 7 a lawfully admitted permanent resident of the United States
 8 and who is a woman, Black American, Hispanic American, Native
 9 American, Asian-Pacific American, Asian-Indian American, or any
 10 other minority person or individual found to be disadvantaged
 11 by the United States small business administration. However,
 12 the department may also determine, on a case-by-case basis,
 13 that an individual who is not a member of one of the enumerated
 14 groups is a socially and economically disadvantaged individual.

15 A rebuttable presumption exists that individuals in the
 16 following groups are socially and economically disadvantaged:

17 a. "Asian-Indian Americans", which includes persons whose
 18 origins are from India, Pakistan, Bangladesh, Bhutan, the
 19 Maldives Islands, Nepal, or Sri Lanka.

20 b. "Asian-Pacific Americans", which includes persons whose
 21 origins are from Japan, China, Taiwan, Korea, Burma (Myanmar),
 22 Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the
 23 Philippines, Brunei, Samoa, Guam, the United States trust
 24 territories of the Pacific Islands, and the Northern Marianas,
 25 Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Micronesia, or Hong
 26 Kong.

27 c. "Black Americans", which includes persons having origins
 28 in any of the black racial groups of Africa.

29 d. "Hispanic Americans", which includes persons of Mexican,
 30 Puerto Rican, Cuban, Central or South American, or other
 31 Spanish or Portuguese culture or origin, regardless of race.

32 e. "Native Americans", which includes persons who are
 33 American Indians, Eskimos, Aleuts, or Native Hawaiians.

34 Sec. 2. NEW SECTION. 314.13A Contract assessment
 35 — socially and economically disadvantaged individuals.

1 1. The department shall annually assess the impact of
2 federal and nonfederal awarded contracts on socially and
3 economically disadvantaged individuals, including women and
4 persons with a disability, as defined in section 15.102, in the
5 state.

6 2. The assessment shall include the following:

7 a. Any disproportionate or unique impact the contract may
8 have on socially and economically disadvantaged individuals in
9 the state.

10 b. A rationale for the contract having an impact on socially
11 and economically disadvantaged individuals in the state.

12 c. Consultation with representatives of socially and
13 economically disadvantaged individuals in cases where
14 the contract has an identifiable impact on socially and
15 economically disadvantaged individuals in the state.

16 3. This section shall be carried out to the extent
17 consistent with federal law.

18 4. The assessment shall be used for informational purposes.

19 Sec. 3. Section 314.14, Code Supplement 2009, is amended to
20 read as follows:

21 314.14 ~~Contracts set aside for disadvantaged business~~
22 ~~enterprises~~ small businesses.

23 ~~1. Definitions. As used in this section:~~

24 a. ~~"Disadvantaged business enterprise" means a small business~~
25 ~~concern which meets either of the following:~~

26 ~~{1} Is at least fifty-one percent owned by one or more~~
27 ~~socially and economically disadvantaged individuals.~~

28 ~~{2} Whose management and daily business operations are~~
29 ~~controlled by one or more of the socially and economically~~
30 ~~disadvantaged individuals who own it.~~

31 b. ~~"Small business concern" means a business which is~~
32 ~~independently owned and operated and which is not dominant in~~
33 ~~its field of operation.~~

34 c. ~~"Socially and economically disadvantaged~~
35 ~~individuals" means those individuals who are citizens of the~~

1 ~~United States or who are lawfully admitted permanent residents~~
 2 ~~and who are African Americans, Hispanic Americans, Native~~
 3 ~~Americans, Asian-Pacific Americans, Asian-Indian Americans, or~~
 4 ~~any other minority or individuals found to be disadvantaged by~~
 5 ~~the United States small business administration. However, the~~
 6 ~~department may also determine, on a case-by-case basis, that an~~
 7 ~~individual who is not a member of one of the enumerated groups~~
 8 ~~is socially and economically disadvantaged. A rebuttable~~
 9 ~~presumption exists that individuals in the following groups are~~
 10 ~~socially and economically disadvantaged:~~

11 ~~(1) "African Americans" which includes persons having~~
 12 ~~origins in any of the black racial groups of Africa.~~

13 ~~(2) "Hispanic Americans" which includes persons of Mexican,~~
 14 ~~Puerto Rican, Cuban, Central or South American, or other~~
 15 ~~Spanish culture or origin, regardless of race.~~

16 ~~(3) "Native Americans" which includes persons who are~~
 17 ~~American Indians, Eskimos, Aleuts, or Native Hawaiians.~~

18 ~~(4) "Asian-Pacific Americans" which includes persons whose~~
 19 ~~origins are from Japan, China, Taiwan, Korea, Vietnam, Laos,~~
 20 ~~Cambodia, the Philippines, Samoa, Guam, the United States Trust~~
 21 ~~Territories of the Pacific, and the Northern Marianas.~~

22 ~~(5) "Asian-Indian Americans" which includes persons whose~~
 23 ~~origins are from India, Pakistan, and Bangladesh.~~

24 ~~d. "Prequalified" means that the disadvantaged business~~
 25 ~~enterprise is currently approved by the department as a~~
 26 ~~disadvantaged business enterprise, is a recognized contractor~~
 27 ~~engaged in the class of work provided for in the plans and~~
 28 ~~specifications, possesses sufficient resources to complete the~~
 29 ~~work, and is able to furnish a performance bond for one hundred~~
 30 ~~percent of the contract.~~

31 ~~2. Set-aside.~~ Notwithstanding section 314.1, there may be
 32 set aside contracts for bidding by prequalified disadvantaged
 33 ~~business enterprises~~ small businesses a percentage of the total
 34 annual dollar amount of public contracts let by the department.
 35 The annual dollar amount set aside for bidding by prequalified

1 ~~disadvantaged business enterprises~~ small businesses shall
2 not exceed ten percent of the total dollar amount of ~~federal~~
3 ~~aid~~ highway construction contracts let by the department and
4 ~~federal-aid~~ transit dollars administered by the department.
5 The director may estimate the set-aside amount at the beginning
6 of each fiscal year and a suit shall not be brought by any party
7 as a result of this estimate. Set-aside contracts will be
8 awarded to the lowest responsible prequalified ~~disadvantaged~~
9 ~~business enterprise~~ small business. This section shall not be
10 construed as limiting the department's right to refuse any or
11 all ~~disadvantaged business enterprise~~ small business bids.

12 Sec. 4. PARTICIPATION GOALS — SMALL BUSINESSES AND
13 DISADVANTAGED BUSINESS ENTERPRISES.

14 1. The department of transportation, in cooperation with
15 organizations that represent highway contractors, shall submit
16 recommendations to the general assembly and the governor by
17 November 1, 2010, concerning methods to track and assess the
18 participation of small businesses and disadvantaged business
19 enterprises in receiving nonfederal highway funding. The
20 recommendations may include methods to assess the effort on
21 the part of contractors to achieve participation by small
22 businesses and disadvantaged business enterprises and may
23 involve the establishment of participation goals. Following
24 the consideration and adoption of recommendations by the
25 general assembly, the department shall annually review
26 the small business and disadvantaged business enterprise
27 participation achievements of contractors who were awarded
28 contracts for nonfederal aid highway projects with the
29 department.

30 2. The department shall work in cooperation with
31 organizations that represent highway contractors, small
32 businesses, and disadvantaged business enterprises to maintain
33 communication among the entities to further the dissemination
34 of information about contract and training resources that are
35 available from the department.

1 EXPLANATION

2 This bill relates to small businesses and disadvantaged
3 business enterprises involved with the awarding of contracts by
4 the department of transportation.

5 In Code section 314.13, the bill provides definitions for
6 disadvantaged business enterprise, small business, socially
7 and economically disadvantaged individual, and other new
8 definitions. Women are now included in the socially and
9 economically disadvantaged individuals definition.

10 Pursuant to new Code section 314.13A, the department shall
11 annually assess the impact of all contracts awarded on socially
12 and economically disadvantaged individuals. The assessment has
13 three parts and is described in the bill. The assessment is
14 for informational purposes.

15 In Code section 314.14, the bill provides that the
16 department may set aside a percentage of the total annual
17 dollar amount of contracts for bidding by prequalified small
18 businesses. The percentage of the annual dollar amount set
19 aside shall not exceed 10 percent. Currently, the department
20 may set aside such percentage for prequalified disadvantaged
21 business enterprises.

22 The department, along with organizations representing
23 highway contractors, shall submit recommendations to the
24 general assembly and governor by November 1, 2010, about how
25 to track and assess the participation of small businesses and
26 disadvantaged business enterprises in receiving nonfederal
27 highway funds. Following consideration and adoption of
28 recommendations by the general assembly, the department shall
29 annually review these groups' participation.

30 The department, in cooperation with highway contractor
31 organizations, small businesses, and disadvantaged business
32 enterprises, shall work to give these groups information about
33 training and contract resources.